

Exhibit C

Letter from Sturm College of Law to Warden True (April 10, 2020)



April 10, 2020

SENT VIA EMAIL

Warden William True
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Dear Warden True:

The undersigned write as attorneys and advocates who are concerned about the inevitable impact of COVID-19 on prisoners at the United States Penitentiary–Administrative Maximum (ADX). We have learned that the planned cell rotations scheduled for this Saturday, April 11, 2020, will continue at ADX, despite the clear health risks associated with the COVID-19 pandemic. We therefore write to urge that ADX temporarily suspend cell rotations during the COVID-19 crisis to help delay and mitigate the effects of COVID-19 on the ADX population.

We understand this is an incredibly stressful time for BOP officials as they make efforts to ensure the safety of both staff and prisoners.¹ While we understand the importance of security at ADX, in times as unprecedented as these, moving forward with cell rotations will create unreasonable risk to both staff and prisoners' health. It is our understanding that other BOP facilities with prisoners confined in comparable conditions of solitary confinement have temporarily suspended cell rotations during the crisis.

If ADX rotations proceed as scheduled, the BOP will put prisoners and staff at great risk of infection. Indeed, moving forward with these cell rotations runs contrary to Phase 5 of the BOP's COVID-19 Action Plan, implemented on April 1, 2020, which limits prisoner movement for fourteen days.² As such, we strongly encourage ADX to reconsider its decision to rotate prisoners' cell assignments for the following, non-exhaustive reasons:

¹ As of April 9, 2020, there are 283 federal prisoners and 125 BOP staff who have confirmed positive test results for COVID-19 nationwide. So far, COVID-19 has caused eight federal prisoners' deaths. Given the limited availability of tests throughout the country and the fact that some who have contracted the virus may remain largely asymptomatic, these numbers are quite likely an underrepresentation of the number of prisoners who have COVID-19. Federal Bureau of Prisons, "COVID-19 Virus," Apr. 9, 2020, available at: <https://www.bop.gov/coronavirus/>.

² Federal Bureau of Prisons, COVID-19 Action Plan: Phase Five (Mar. 31, 2020), available at: https://www.bop.gov/resources/news/20200331_covid19_action_plan_5.jsp.

- **COVID-19 is highly contagious, persists in the environment, and may be hard to detect by observation of symptoms only.** The virus apparently spreads easily, through coughing or sneezing; droplets with the virus can remain in the air for up to three hours.³
- **Studies show that an infected person may be asymptomatic for fourteen days after contracting COVID-19**—while the BOP has seemingly temporarily stopped transfers to and from ADX, there still exists a great risk that staff members assisting in cell rotations may be infected and spread the disease among prisoners.⁴
- **Recent studies show that coronavirus survives on steel surfaces for up to three days;** the cells in ADX contain both steel toilets and sinks, increasing the risk that a prisoner who moves into a new may contract the disease from the previous prisoner or the staff member assisting in cell rotations.⁵
- **In facilities that do not have appropriate ventilation systems, COVID-19 lives longer.** The Centers for Disease Control and Prevention (CDC) recommends that facilities consider the size of the room and the ventilation system design (including flowrate [air changes per hour] and location of supply and exhaust vents) when deciding how long to close off rooms or areas used by ill persons before beginning disinfection.⁶
- **Prisoners are a vulnerable population and are often most at risk during public health emergencies.** Prisoners have fewer protections from an outbreak and may face more significant fallout from disruptions in daily life.⁷
- **There is likely not enough time to properly sanitize each cell prior to rotation.** The sanitary measures required by the CDC understandably require a great deal of time and resources, and in the event a cell is not thoroughly sanitized and cleaned before cell rotations occur, the outcome could very well be deadly.⁸

If the ultimate goal is to protect both staff and prisoners, then BOP should suspend cell rotation to mitigate spread of the virus. Notably, when BOP staff are exposed to COVID-19 at other facilities, the BOP has

³ *Mays, et al. v. Dart*, Case No. 1:20-cv-02134, Doc. 47 at 18 (N.D. Ill. Apr. 9, 2020) (attached hereto as **Exhibit 1**).

⁴ *Symptoms of Coronavirus*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last reviewed: March 20, 2020),

<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

⁵ *New Coronavirus Stable for Hours on Surfaces*, NATIONAL INSTITUTES OF HEALTH, U.S. DEPT. OF HEALTH AND HUMAN SERVICES (March 17, 2020), <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>.

⁶ *Cleaning and Disinfection for Households*, CENTERS FOR DISEASE CONTROL AND PREVENTION, (last reviewed Apr. 9, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfection.html>.

⁷ Megan A. Novisky & Chelsey Narvey, *COVID-19, incarceration and our public health*, THE HILL (Mar. 19, 2020), <https://thehill.com/opinion/criminal-justice/488394-covid-19-incarceration-and-our-public-health>.

⁸ *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CENTERS FOR DISEASE CONTROL AND PREVENTION, (March 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

indicated that “As much as possible, staff are being assigned to the same posts and not rotating, as an additional measure to mitigate the spread of the virus. Accommodations for staff who prefer to stay at the institution are available in the form of the [a] bunkhouse, shower and bathroom trailers and sleeping quarters in the staff training center.”⁹ Likewise, prisoners at ADX should be assigned to the same cells and not rotate in order to mitigate the spread of the virus.

As countries all over the world, including the United States, enforce restrictions on their citizens’ mobilities, it contravenes uncontested science for ADX cell rotations to continue as scheduled. Additionally, knowingly disregarding the well-known risks of COVID-19 is contrary to common sense and the Constitution.¹⁰ We believe that suspending ADX cell rotations as well as implementing other measures in accordance with CDC guidelines¹¹ will mitigate the spread of COVID-19 for all people at ADX. We recognize this is an incredibly difficult situation to navigate. We are grateful for the measures the BOP has already put in place and welcome the opportunity to establish a dialogue to collaboratively reach meaningful resolutions for both ADX staff and prisoners.

Thank you for your time and consideration. Please contact us if you have any questions or if we can be of any assistance.

Well wishes,

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⁹ Clare Hymes, *Crisis at Oakdale: Coronavirus cripples federal prison in Louisiana*, CBS News (Apr. 8, 2020 at 11:02 AM), available at: <https://www.cbsnews.com/news/coronavirus-fci-oakdale-federal-prison-louisiana-covid-19/>.

¹⁰ **Ex. 1** at 17-18 (recognizing that a prison’s failure to take appropriate measures poses the type of unreasonable risk to future health that would rise to the level of a Constitutional violation).

¹¹ *Supra*, footnote 8.

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